

Message Text

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PAGE 01 STATE 313352
ORIGIN SCSE-00

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FM SECSTATE WASHDC
TO AMEMBASSY SEOUL PRIORITY

UNCLAS STATE 313352

E.O. 11652: N/A

TAGS: CGEN: (YOUNG SOOL SHIN)

SUBJECT: JUDICIAL ASSISTANCE

REF: SEOUL 10175

1. DEPT OF JUSTICE APPRECIATES INFO TRANSMITTED BY REFTEL;
HOWEVER, JUSTICE STILL REQUIRES EITHER NEW REQUEST FOR
JUDICIAL ASSISTANCE OR EXTENSION OF PRESENT REQUEST, FOR
REASONS WHICH FOLLOW.

2. AS STATED REFTEL U.S. MAGISTRATE HAS RULED THAT REQUEST
WILL NOT BE EXECUTED. DEPT AND DOJ CONSIDER THIS RULING
TO BE BASED ON INCORRECT APPLICATION OF LAW TO FACTS IN THIS
CASE, AND DOJ WILL THEREFORE APPEAL RULING.

3. HOWEVER, UNDER ART 3 OF U.S. CONSTITUTION, FEDERAL COURTS
ARE ONLY PERMITTED TO DECIDE ACTUAL CONTROVERSIES, NOT
THEORETICAL ONES. SINCE KOREAN COURT'S REQUEST APPEARS TO
BE VALID ONLY IF EXECUTED BEFORE 12/31/76, AND SINCE APPEAL
CANNOT BE HEARD BEFORE THAT DATE, DISPUTE OVER CORRECTNESS
U.S. MAGISTRATE'S RULING WILL BE PURELY THEORETICAL UNLESS
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KOREAN COURT ISSUES NEW REQUEST OR EXTENDS DEADLINE FOR OLD
REQUEST (BECAUSE NO MATTER WHAT THE COURT OF APPEALS
DECIDES, REQUEST WILL NOT BE EXECUTED BECAUSE OF ITS SELF-

IMPOSED EXPIRATION DATE).

4. IN ORDER TO USE INFO DEVELOPED BY POST, IT WILL BE
NECESSARY TO KEEP CASE ALIVE BY OBTAINING NEW REQUEST
FROM DISTRICT COURT OR APPELLATE COURT, OR EXTENSION FROM
DISTRICT COURT. DOJ CONSIDERS THAT BEST SOLUTION IS
NEW REQUEST FROM APPELLATE CT.
ROBINSON

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